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Judge Tom Lowe
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PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: October 4, 2007
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 431
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Joseph Zakas, Chairperson; Rep. Trent Van Haaften, Vice-Chairperson; Rep. Ralph Foley; Joseph. H. Davis; Kris Fruehwald; Jim Martin; Dave Pendergast; Dan Reeves; Tim Sendak.

Members Absent: Sen. Brent Steele; Sen. John Broden; Rep. Jeb Bardon; Chris Colpaert; Tom Hardin; Ora Kincaid; Judge Tom Lowe.

Senator Joseph Zakas called the meeting to order and announced that the Commission's October 18 meeting will begin at 1:00 p.m. rather than at 1:30 p.m.

Preliminary Drafts

The Commission considered but did not take action on a number of Preliminary Drafts (PDs) that had been prepared at the request of the Probate, Trust, and Real Property Section of the Indiana State Bar Association. Mr. Jeff Kolb presented the following PDs on

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

behalf of the Section:

- PD 3105 concerning funeral planning (Exhibit A)
- PD 3112 concerning access to safety deposit boxes (Exhibit B)
- PD 3113 concerning access to safety deposit boxes (Exhibit C)
- PD 3114 concerning the signing of a power of attorney (Exhibit D)
- PD 3116 concerning the duration of powers delegated by a parent or guardian (Exhibit E)
- PD 3118 concerning the order in which trust interests must be abated if the trust property is insufficient to satisfy the interests of all beneficiaries (Exhibit F)

Preliminary Drafts 3112 and 3113 represent two different approaches to providing an affidavit procedure for gaining access to a decedent's safety deposit box. After hearing the differences, the Commission decided to consider only the approach set forth in PD 3112 at its October 18 meeting. The Commission's discussion of the PDs led to suggested changes to PDs 3112 and 3118 that will be considered at the October 18 meeting.

Qualified Personal Residence Trusts and the Homestead Credit

Mr. Kolb also reported the Section's interest in amending the definition of owner found in IC 6-1.1-1-9 to enable an individual residing in a home owned by the family's qualified personal residence trust to obtain the homestead credit. Mr. Kolb explained that because IC 6-1.1-1-9(f) refers only to a life tenant the statute is insufficient to grant the ownership status to the individual that is essential to obtaining a homestead credit. The individual is not a life tenant because the individual resides in the home for a specific period of time until title to the home is transferred under the terms of the trust. Staff Attorney Ross Hooten read the Section's suggested amendment (Exhibit G) to the statute and expressed his concern that the suggested language thwarts the goal of using the plain meaning of words when drafting statutes. Sen. Zakas and Mr. Kolb agreed to Mr. Hooten's suggestion that Mr. Kolb and Mr. Hooten should work together to develop language for the Commission's consideration at the October 18 meeting.

Intestate Succession

Representative Dennis Tyler asked the Commission for its consideration of whether the intestate succession statute should be amended to preclude parents who abandon, desert, or fail to support their children from inheriting from a child who dies intestate. Rep. Tyler described the tragic case of a man who killed his ex-wife in front of his daughter's school and was sentenced to prison for 60 years for the killing. The circumstances of the killing led to a wrongful death settlement for the victim's two daughters. The settlement was placed into trust for the girls but no contingent beneficiaries were named. When the older girl committed suicide her interest in the trust was divided between the father, the surviving sister, and a half-brother who was the father's son from another relationship.

Mr. Jack Quirk represented the girls' mother in the divorce case. Mr. Quirk shared his perspective on the ability of the father and his son to inherit under these circumstances.

The Commission discussed the case with Mr. Kolb and Paje Felts from the Indiana State Bar Association. Some concern was raised about the ability to suitably define "abandonment". It was suggested that the statutes concerning adoption, child custody, and the termination of parental rights termination may contain useful language.

IC 29-1-14-1(d) and Estate Administration

Mr. Hooten presented a letter (Exhibit H) received from Mr. Paul O. Sauerteig objecting to the application of IC 29-1-14-1(d) which is an absolute bar on claims against an estate that are not filed within nine months of the decedent's death. Mr. Sauerteig's letter recommends removing subsection (d) on the grounds that it unjustly impairs legitimate creditors when estates are not opened until after the nine month deadline passes. Various Commission members described the circumstances in which waiting for the deadline to pass is in the best interests of the estate. It was also noted that creditors aren't necessarily impaired by the application of subsection (d) because the probate law does permit creditors to petition the court to open an estate.

Senator Zakas then directed Mr. Hooten to research the laws of other states for a comparison to the Indiana approach.

Senator Zakas adjourned the meeting at 2:55 p.m.